

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

**Proposing rule making related to subsidized guardianship program and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 204, “Subsidized Guardianship Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 234.6.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 234.6, 45 CFR 1356.21, and the Social Security Act, Sections 472 and 473(d)(3).

*Purpose and Summary*

The administrative rules for subsidized guardianship are being amended in order to implement the program under the guidelines of the federal Fostering Connections to Success and Increasing Adoptions Act. The previous program was administered through a federal waiver which has been eliminated.

*Fiscal Impact*

This rule making has a fiscal impact of \$100,000 annually or \$500,000 over five years to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 16, 2018. Comments should be directed to:

Harry Rossander  
Bureau of Policy Coordination  
Department of Human Services  
Hoover State Office Building, Fifth Floor  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Email: [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental

subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend **441—Chapter 204**, Preamble, as follows:

PREAMBLE

This chapter ~~implemented a five-year demonstration waiver project for~~ implements a subsidized guardianship program to provide financial assistance to guardians of eligible children who are in foster care but are not able to be adopted and who are not able to return home. ~~Notification has been given to the United States Department of Health and Human Services that the demonstration project will end effective September 1, 2010.~~ A subsidized guardianship agreement authorized under this chapter will remain in effect until the agreement is terminated under the terms of this chapter.

ITEM 2. Adopt the following **new** definition of “Relative” in rule **441—204.1(234)**:

“Relative” means, for this chapter only, a person to whom a child is related by blood, marriage, or adoption, or a person who has a significant, committed, positive relationship with the child.

ITEM 3. Amend subrule 204.2(1) as follows:

**204.2(1) General conditions of eligibility.** The guardian named in a permanency order under Iowa Code section 232.104(2) “d”(1) or Iowa Code chapter 633 for a child who was previously in the custody of the department is eligible for subsidy when all of the following conditions exist:

a. The child has a documented permanency goal of:

~~(1) Long term foster care;~~

~~(2) (1) Guardianship; or~~

~~(3) (2) Another planned permanent living arrangement.~~

~~b. The child has been in a licensed foster care placement and has lived in foster care for at least 6 of the last 12 months.~~

~~e. b.~~ The child is either:

~~(1) 14 years of age or older and consents to the guardianship; or~~

~~(2) 12 years of age or older and guardianship has been determined to be in the child’s best interest;~~

or

~~(3) (2) Under No younger than 12 years of age and part of a sibling group with a child aged ~~12~~ 14 or older.~~

~~d. c.~~ The child has lived in continuous ~~placement~~ foster family care with the prospective guardian for the six months before initiation of the guardianship subsidy.

~~e. d.~~ The prospective guardian is a ~~person~~ licensed relative foster parent who has a significant relationship with the child and demonstrates a willingness to make a long-term commitment to the child’s care.

(1) The guardian ~~may~~ shall be a relative ~~or nonrelative~~, as defined in this chapter.

(2) Placement with that guardian must be in the best interest of the child. The best-interest determination must be documented in the case file.

e. A child 12 years of age or older and part of a sibling group with a child 14 years of age or older may be eligible for subsidy if all criteria are met. The following conditions for the younger sibling shall also be met:

(1) The sibling is placed as a foster child in the same prospective guardian home.

(2) The guardian and the department agree it is appropriate for guardianship to be granted for the sibling.

~~f. The child has been randomly selected to participate in the waiver demonstration project.~~

ITEM 4. Amend subrule 204.2(4) as follows:

204.2(4) Other services. ~~Rescinded IAB 10/11/06, effective 11/1/06.~~ Other services available to meet the needs of the child that are free of charge, such as federal, state, and local governmental programs, or private assistance programs, shall be explored and used prior to the expenditure of subsidized guardianship funds.

ITEM 5. Amend rule 441—204.3(234) as follows:

**441—204.3(234) Application.** ~~Applications for the subsidized guardianship program shall not be accepted after August 31, 2010~~ may be made at any county office of the department.

204.3(1) Application forms. Application for a subsidized guardianship shall be made on the approved department form.

204.3(2) Eligibility determination. The determination of whether a child meets the eligibility requirements is made by the department. The proposed guardian shall be notified in writing of the decision of the department regarding the child's eligibility for the program and the amount of subsidy to be provided.

204.3(3) Effective date. The effective date of the guardianship subsidy payment shall be the date the guardianship order is signed if all other conditions of eligibility are met.

204.3(4) Redetermination. The department worker shall review the child's eligibility, the needs of the child and the child's unearned income every 12 months. Reviews may be done more often if needed due to the child's need for special services, revision of the subsidy amount because of the child's age, or a request for review by the guardian.

204.3(5) Determination of eligibility after age 18. The department shall review the subsidy agreement when the child reaches the age of 17½ to determine whether the child is eligible to receive subsidy to the age of 21 due to the child's physical, intellectual, or mental health disability.

a. A disability shall be diagnosed by a physician, a qualified mental health professional or a qualified intellectual disability professional.

b. The diagnosed disability shall be current within one year prior to the child's eighteenth birthday.

c. Documentation of the child's diagnosed disability shall be provided by the child's parents to the department to make the determination of continued eligibility to the age of 21.

ITEM 6. Amend rule 441—204.4(234) as follows:

**441—204.4(234) Negotiation of amount of subsidy.**

204.4(1) Subsidy agreement. The amount of subsidy shall be negotiated between the department and the guardian, and shall be based upon the needs of the child, and the circumstances of the family. ~~Each time negotiations are completed, the Guardianship Subsidy Agreement, Form 470-3631, shall be completed and signed by the guardian and the department worker.~~

204.4(2) Amount of subsidy. ~~The department shall enter into the agreement based upon available funds.~~ Each time negotiations are completed, the department worker and the guardian shall complete Form 470-3631, and sign a new Guardianship Subsidy Agreement.

a. The guardianship subsidy shall be based on a flat daily foster care rate adjusted according to the needs of the child and the circumstances of the family. The maximum monthly maintenance payment for a child in subsidized guardianship shall be made pursuant to the foster family care maintenance rates according to the age and special needs of the child as found in 441—subrule 156.6(1) and 441—paragraphs 156.6(4)“b” and “f.”

(1) The rate for the guardianship subsidy shall not exceed the state's current daily basic foster care rate plus any daily level 1 or 2 special needs allowance or sibling allowance for which the child is eligible, as found at in 441—subrule 156.6(1) and 441—paragraphs 156.6(4)“b” and “f.”

(2) Rescinded IAB 1/3/07, effective 1/1/07.

b. If the subsidized guardianship payment is less than the maximum amount allowed, the guardian may request an increase if ~~the~~ there is a substantial change in the child's or family's needs and circumstances ~~require~~ that requires additional resources.

c. Guardianship payments shall continue if the guardian dies or becomes incapacitated and has named a successor guardian in the Guardianship Subsidy Agreement or in any amendments to the agreement.

**204.4(3)** No change.

**204.4(4)** *Nonrecurring expenses.* The nonrecurring expenses necessary to finalize a guardianship shall be limited to the amount found in 441—subparagraph 201.6(1)“a”(7) not exceed \$2,000.

**204.4(5)** *Special services.*

a. Reimbursement to the guardian family or direct payment made to a provider is limited to the following services.

(1) Outpatient individual or family services provided from a non-Medicaid provider only with approval from the service area manager or designee and when one of the following applies:

1. The services are not available for a Medicaid provider within a reasonable distance from the family.

2. The child and the family were receiving therapy or counseling from a non-Medicaid provider and it would not be in the child's best interest to disrupt the services.

3. Available Medicaid providers experienced in working with foster, adopted, or blended families.

(2) Travel-related expenses including transportation, meals and lodging not covered by Medicaid for visitation or family therapy when the child is receiving Medicaid-paid services out of the home.

(3) Supplies and equipment as required by the child's special needs and unavailable through other resources.

(4) Funeral benefits at the amount allowed for a foster child in accordance with rule 441—156.8(234).

b. Any single special service and any special service delivered over a 12-month period costing \$500 or more shall have prior approval from the central office program manager prior to expending program funds.

c. For all Medicaid-covered services, the department shall reimburse at the same rate and duration as Medicaid as set forth in rule 441—79.1(249A).

ITEM 7. Amend rule 441—204.6(234) as follows:

**441—204.6(234) Termination of subsidy.** A guardianship subsidy agreement ~~negotiated based on an application signed on or before August 31, 2010,~~ shall remain in effect until the subsidy is terminated based on one of the grounds listed in this rule. The subsidy shall terminate when any of the following occur, and a notice shall be sent which states the reason for the termination:

1. to 3. No change.

4. The relationship ends due to the death of the child or the death of the guardian of the child (one in a single-parent family or both in a two-parent family).

5. The terms of Form 470-3631, the Guardianship Subsidy Agreement, are concluded.

6. No change.

7. Due to incapacity, the guardian can no longer discharge the responsibilities necessary to protect and care for the child, and the guardianship has been or will be vacated. The department has determined the guardian is not providing financial support to the child.

8. The guardian fails to abide by the terms of Form 470-3631, the Guardianship Subsidy Agreement.

9. and 10. No change.

ITEM 8. Amend rule 441—204.7(234) as follows:

**441—204.7(234) Reinstatement of subsidy.** Reinstatement of the subsidy shall be made when the subsidy was terminated ~~because of~~ at the guardian's request, and the guardian has requested reinstatement.